

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

EPICREALM, LICENSING, LLC	§	
	§	
v	§	No. 5:07CV125
	§	
AUTOFLEX LEASING, INC., et al.	§	

EPICREALM, LICENSING, LLC	§	
	§	
v	§	No. 5:07CV126
	§	
FRANKLIN COVEY CO., et al.	§	

EPICREALM, LICENSING, LLC	§	
	§	
v	§	No. 5:07CV135
	§	
VARIOUS, INC.	§	

ORDER

Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for Assignment of Duties to United States Magistrate Judges, Defendants' Joint Motion for Leave to Amend Their P.R. 3-3 Invalidity Contentions (Docket Entry #s 486, 446, 110) was referred to the undersigned for the purposes of hearing and determining said motion. The Court, having reviewed the relevant briefing and hearing arguments of counsel June 24, 2008, is of the opinion the motion should be **GRANTED**.

Defendants Clark Consulting, Franklin Covey, Friendfinder, Various and Herbalife request leave to amend their joint invalidity contentions under Patent Local Rule ("P.R.") 3-6, as follows:

(1) revise their contentions in compliance with P.R. 3-3(a)-(d) to reflect plaintiff epicRealm's current theories of how the "release" limitation, which is present in all asserted claims, can be met;

(2) reinstate from their preliminary invalidity contentions three items of prior art, and modify another item, to reflect epicRealm's theories of "release" and newly acquired information about the structure and operation of the underlying prior art systems; and (3) add invalidity contentions regarding a system known as Oracle Webserver 2.xx (the "Oracle 2 System"), based on documentation produced by Oracle Corporation, and February 2008 and April 2008 deposition testimony that establishes the applicability of the Oracle 2 System as prior art against the asserted patents.

The Court finds good cause for Defendants' proposed amendments to their invalidity contentions. Specifically regarding the "release" claim limitation, Defendants moved to amend timely after discovering the scope of epicRealm's "release" theories. Good cause also exists to allow Defendants' amendments reflecting newly acquired information regarding previously disclosed systems and adding material references known to epicRealm. Defendants have diligently searched for prior art and only recently discovered that the Oracle 2 System sought to be added is available as prior art. The amendments sought by Defendants are material, and epicRealm will not be prejudiced by the proposed amendments. Accordingly, it is

ORDERED that Defendants' Joint Motion for Leave to Amend Their P.R. 3-3 Invalidity Contentions (Docket Entry #s 486, 446, 110) is **GRANTED**. It is further

ORDERED that Defendants are granted leave to amend their P.R. 3-3 Invalidity Contentions to reflect epicRealm's interpretation of the "release" limitation present in all asserted claims and to include the additional prior art referenced herein.

SIGNED this 26th day of June, 2008.


CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE